IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 343 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

ARVIND INDRASHANKER RAVAL

Versus

HARKAURBEN JAMNADAS

Appearance:

MR SUREN M SHAH for Petitioner

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 16/06/1999

ORAL JUDGEMENT

The challenge in this Appeal is to the order dated 21st April, 1998 recorded below Exh.5 of Regular Civil Suit No.273 of 1995 by learned Civil Judge (S.D.), Bhavnagar whereby he dismissed the application at Exh.5 submitted by the plaintiff - appellant herein on the grounds recorded therein. The appellant - original plaintiff filed Regular Civil Suit No.273 of 1995 for a declaration and injunction in respect of Survey Nos.240

and 248/1. It has been averred in the plaint that one development agreement dated 29th January, 1980 was executed by the defendants - respondents herein and pursuant to that agreement, they also executed a power of attorney in favour of the plaintiff. As per the terms and conditions of the said power of attorney, the plaintiff had to release the land from reservation under the Urban Land (Ceiling and Regulation) Act. It is the case of the plaintiff that after the agreement was executed, he started development of the said land and for that purpose he has prepared map etc. It is further averred by the plaintiff that the defendants had to get the title clearance certificate of the said land but the defendants have not brought the said certificate till today, therefore, the plaintiff could not develop the disputed land. Thereafter, as there was no response from the respondents herein, the plaintiff served a Notice to them on 21st September, 1994 through his advocate. The defendants have not replied to the said Notice. It is the further say of the plaintiff that the defendants are trying to sell the land to other parties by fetching a fat amount and thereby they are trying to infringe the rights of the plaintiff. Thereupon, a suit was filed by the plaintiff for a declaration and injunction. Along with the suit, application vide Ex.5 was also submitted. In that application, it has been averred that the plaintiff has paid Rs.45,000/- to the defendants as consideration for the disputed land by way of earnest money.

2. The defendants - respondents contested the suit and the application at Ex.5 by filing written statement, thereby they have inter alia contended that the suit was not maintainable as well as it is time-barred. It is further averred that the agreement to sell was not registered. It is further averred that the disputed land is under reservation for the University and would also fall within the restrictions of the Urban Land (Ceiling and Regulation) Act and, therefore, the said agreement was also not a valid one. It is also denied that the plaintiff has written a letter to the defendants and no Notice was served. Ultimately it was prayed that there is no prima facie case in favour of the plaintiff and balance of convenience also is not in favour of the plaintiff and, therefore, prayed for dismissal of the suit and the application of interim injunction.

3. The learned trial Judge after considering the plaint, application Ex.5, affidavit-in-reply, documents produced before him and written submissions, reached the conclusion that the plaintiff has no prima facie case;

balance of convenience also does not lie in his favour; no irreparable injury would be caused to the plaintiff and resultantly he dismissed the application at Ex.5 by not granting injunction as prayed for.

4. Learned advocate Mr.Suren M.Shah while appearing on behalf of the appellant contended that the learned trial Judge has not considered the documents in its proper perspective and he has misread the documents. He has also contended that the amount of consideration was paid to the defendants and the defendants are trying to dispose of the property and thereby they are trying to infringe the rights of the plaintiff. On the aforesaid premise, he contended that the order passed below Ex.5 is ex facie illegal, requiring interference of this Court by allowing the application at Ex.5 and, therefore, the Appeal from Order may be admitted and on the Civil Application order restraining the defendant from selling the disputed propery may be passed.

5. Now, sofar as the disputed property is concerned, admittedly, it stands in the name of the defendants. The plaintiff has prayed for relief under the Specific Relief Act for a declaration. The learned trial Judge has observed that so far as Section 34 of the Specific Relief Act is concerned, the plaintiff has to pray for relief for a declaration along with consequential relief. The learned trial Judge has also further observed that it was a relief for declaration only and he has not asked relief for specific performance of contract. The learned trial Judge has also observed that as per the terms of the contract, the price of the land was fixed at Rs.50,000/- per vigha and in all Rs.18 lacs was fixed for 36 vighas and the defendants have not shown willingness to pay that amount. When substantive prayer for specific performance is not asked for, the plaintiff is not entitled to get relief as prayed for.

6. The said agreement was executed on 29th January, 1980 while the suit was brought on 29.5.1995 and as per the Limitation Act, the time-limit provided is 3 years to file a suit for enforcement of specific performance of contract and, therefore, the suit is barred by limitation of time. It has also come in evidence that the plaintiff has not made any efforts to develop the disputed land after 29.1.1980 i.e. from the date when the agreement to sell was executed. The learned trial Judge has also observed that so far as the payment of the amount of consideration of Rs.45,000/- is concerned, it can be decided only after recording evidence and if ultimately the plaintiff succeeds in suit, in that case, he can ask

for compensation for the loss which would incur by virtue of non-performance of the contract by the defendants.

7. The learned trial Judge has also considered all the case laws and authorities relied upon by the plaintiff and has also considered the written submissions made by the plaintiff. All the case laws upon which reliance was placed wherein the Hon.'ble Supreme Court and various High Courts have succinctly laid down the law with respect to ganting or refusal of injunction. Since the plaintiff has no prima facie case, all the authorities relied upon by the plaintiff would not come to the rescue of his case.

8. In view of the discussion made hereinabove, I am fully satisfied that the learned trial Judge has committed no error either in law or in facts in deciding the application at Ex.5 whereby he has refused to grant injunction as prayed for. The learned trial Judge has considered all the case laws and applied correct principles while granting or refusing the injunction. On the facts and circumstances of the case, no other conclusion can be arrived at except the one which the learned trial Judge has reached.

9. Moreover, this is an Appeal from Order which is covered under Order 43 of the Civil Procedure Code, and all the provisions of Order 41 of the C.P.C. shall also apply so far as may be, to Appeals from Order and, therefore, if this court is in general agreement with the view expressed by the learned trial Judge, it is not necessary for this court either to reiterate the evidence adduced before the trial court or to restate the reasons given by the learned trial Judge while deciding the application at Ex.5 and in my view the expression of general agreement with reasons given in the order by the learned trial Judge would ordinarily suffice in the facts of the present case for not interfering with the order passed below Ex.5. This is so in view of the decisions rendered by the Hon.'ble Supreme Court in GIRIJANANDINI DEVI & OTHERS v. BIJENDRA NARAIN CHOUDHARY reported in AIR 1967 Supreme Court 1124 and STATE OF KARNATAKA v. HEMAREDDY & ANR. reported in AIR 1981 Supreme Court 1417.

10. In the aforesaid decisions, the Hon.'ble Apex Court has clearly elucidated that when the appellate Court agrees with the views of the trial Court on evidence, it need not be restated the facts of evidence or reiterate the reasons given by the trial court. Expression of general agreement with reasons given by the

court decision of which is under appeal, would ordinarily suffice.

11. On overall appreciation of evidence, this Court is satisfied that there is no infirmity in the reasoning assigned by the learned trial Judge for refusing to grant injunction in favour of the plaintiff as prayed for. Suffice it to say the learned trial judge has given cogent and convincing reasons for refusing to grant injunction as there is no prima facie case in favour of the plaintiff, nor balance of convenience lies in his favour and no question of considering irreparable injury caused to the plaintiff. Learned advocate Mr.Shah has failed to dislodge the reasons given by the learned trial Judge and convince this court to take a view contrary to the one taken by the learned trial Judge.

12. In the above premise, there is no justifiable reason to interfere with the order passed by the learned trial Judge. The Appeal being found meritless is required to be dismissed in its threshold.

13. In the net result, the Appeal is dismissed.

(KMG Thilake)

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